

IN THE MARION SUPERIOR COURT

CAUSE NO.: 49D07-0806-CT-025019

MICHAEL CARTER LOVE as
Father of Destiny Linden, Deceased,

Plaintiff,

v.

EVERETT COLEMAN, KIM COLEMAN,
RANDI LINDEN, STATE OF INDIANA,
INDIANA DEPARTMENT OF CHILD
SERVICES, MARION COUNTY
DEPARTMENT OF CHILD SERVICES
and THE VILLAGES OF INDIANA, INC.

Defendants.

SETTLEMENT & RELEASE AGREEMENT

THIS RELEASE & SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between Michael Carter Love ("Love"), Randi Linden ("Linden"), State of Indiana, Indiana Department of Child Services, Marion County Department of Child Services (collectively "Governmental Defendants") and The Villages of Indiana, Inc. ("Villages").

WHEREAS, on or about December 7, 2009, Love filed his First Amended Complaint for Damages under the Indiana Child Wrongful Death Act in the Marion Superior Court under Cause Number 49D07-0806-CT-025019 whereby Love alleged that Everett Coleman, Kim Coleman (collectively "Colemans"), Governmental Defendants and Villages were liable for damages associated with the death of Destiny Linden ("Lawsuit");

WHEREAS, on or about December 22, 2009, Linden joined in the lawsuit alleging that Colemans, Governmental Defendants and Villages were also liable to her for damages associated with the death of Destiny Linden;

WHEREAS, Colemans, Governmental Defendants and Villages denied the allegations of the Lawsuit and denied any fault, wrongdoing or liability on their respective part, or the part of its current and past employees and agents; and

WHEREAS Love, Linden, Governmental Defendants, and Villages desire to forever resolve their differences, and desire to enter into this Agreement to resolve all disputes, which the parties have, had or may have, with one another; and

NOW, THEREFORE, in consideration of the mutual promises and covenants and the releases contained herein, Love, Linden, Governmental Defendants, and Villages agree as follows:

1. In consideration of the mutual releases set forth in this Agreement, and all of the promises, covenants, agreements and representations made in this Agreement, Governmental Defendants and Villages, or their respective representatives shall tender to counsel for Love, drafts made out to "Michael Carter Love, and his Attorney, David B. Wilson, and Randi Linden and Lee Cossell Kuehn Crowley & Turner" that when combined reached an aggregate sum of Four Hundred Thousand Dollars (\$400,000.00). Love and Linden will address between themselves, through separate agreement between themselves only, their relative shares of this aggregate sum.
2. In exchange for the considerations set forth in Paragraph 1, and in the remaining portion of this Agreement, Love and Linden (for themselves, their personal representatives, heirs, and relations) hereby releases and forever discharge one another from any claims existing between them except for any claims regarding the division between them of the \$400,000.00 as previously described. In addition, in exchange for the considerations set forth in Paragraph 1, and in the remaining portion of this Agreement, Love and Linden (for themselves, their personal representatives, heirs, and relations) hereby releases and forever discharge Colemans, Governmental Defendants, and Villages as well as their affiliates, subsidiaries, parent companies, related entities, current and former agents, employees, representatives, officers, directors, and attorneys (hereinafter collectively and individually referred to as the "Released Parties"), of and from any and all claims, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, attorney's fees, and compensation, known or unknown, mature or contingent, foreseen or unforeseen, which Love and Linden has ever had, or may have, against the Released Parties from the beginning of time to the date of the execution of this Agreement. This Agreement specifically includes, but is not in any way limited to: (a) any and all claims against the Released Parties, which were, or could have been, asserted in the Lawsuit; (b) any and all claims against the Released Parties arising out of, or in any way related to the death of Destiny Linden; and (c) all damages, including, but not limited to, any extra contractual, exemplary, or punitive damages suffered at any time by reason of any alleged continued effects of any actions by the Released Parties associated with the death of Destiny Linden.
3. As additional consideration, Governmental Defendants, its representatives, employees and agents, and Villages, its representatives, employees, and agents, hereby mutually release and forever discharge one another and Love and Linden of and from any and all claims, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, attorney's fees, and compensation, which Governmental Defendants and Villages had, or may have, against one another in connection with this Lawsuit only.

4. As further consideration for the amount paid to Love and Linden as specified in Paragraph 1, Love and Linden hereby agree to dismiss the Lawsuit against the Released Parties.
5. Love and Linden further expressly represent and warrant that they have not assigned to any other person or entity, all, or any portion of, any claim in the Lawsuit whatsoever that they may have now, or in the future, against the Released Parties, arising out of the death of Destiny Linden which form the basis of the Lawsuit, and agree to indemnify and hold harmless the Released Parties, including for attorney's fees, paralegal fees, costs and expenses, for any and all claims, demands or causes of action brought against the Released Parties, with respect to any such assignment of claims.
6. Love and Linden expressly represent and warrant that they have, or will, satisfy and discharge all liens and claims against the amount provided to them in Paragraph 1 and Love and Linden hereby expressly agree to indemnify and hold harmless the Released Parties, including for attorney's fees, costs and expenses, for any and all claims, demands or causes of action, which are made on the basis of any subrogation claim or lien of any kind concerning the settlement proceeds which are paid in connection with this Agreement. Governmental Defendants and Villages warrant and declare that they have not received any notice of any lien or reimbursement claims relating to the settlement.
7. It is further understood and agreed that this Agreement is not to be construed as, and does not constitute, an admission of liability for wrongdoing on the part of the Released Parties, and that the material purpose of the sum of money paid under this Agreement is solely for the purpose of avoiding the expense and time involved in defending the Lawsuit.
8. Love, Linden, Governmental Defendants and Villages warrant and declare that no representation made by one another, if any, concerning the validity or merit of any claims, induced execution of this Agreement, and that each is acting upon their own judgment, belief and knowledge of the nature of the claims, or potential claims, in entering into this Agreement.
9. Love, Linden, Governmental Defendants and Villages warrant and declare that each was given ample opportunity to seek advice of legal counsel of their own choosing in reviewing and executing this Agreement. Further, each signatory warrants and declares that they are over the age of eighteen (18), are competent, and have carefully read this Agreement, and fully understands and knows the terms thereof.
10. It is further understood and agreed that, should any portion of this Agreement be held invalid by operation of law, or otherwise, the remaining portion shall be given full force and effect and shall not in any way be affected thereby.

11. With respect to Villages, Love and Linden agree that they will not at any time disparage, disclose, reveal, or divulge to any person, firm, corporation or entity whatsoever (other than governmental taxing authorities, clergy, spouses, psychotherapist, accounting professionals as necessary to prepare tax documentation, their attorneys, or as may be required by order of a court of competent jurisdiction) the terms of this Agreement, the fact of its existence, the fact of its execution, and the conveyance of the consideration including but not limited to discussions, correspondence, the amount of the settlement payment recited herein, the source or sources of settlement funds, or the basis upon which the payments are computed. With respect to Villages, Love and Linden further understand, acknowledge, recognize and agree that a breach of the obligations under this provision shall be a material breach hereof, entitling Villages to bring an action for injunctive relief against the breaching party, and if successful in obtaining injunctive relief, an award of its attorney fees against the breaching party.
12. This Agreement contains the entire agreement between the parties hereto, and the terms and conditions of this Agreement are contractual and not a mere recital. Interpretation of the terms and conditions of this Agreement are to be construed according to the laws of the State of Indiana. Any dispute involving this Agreement shall be brought in a court of competent jurisdiction in Indianapolis, Indiana.
13. This Agreement shall inure to the benefit of, and may be enforced by, and shall be binding upon the parties and their heirs, executors, administrators, personal representatives, assigns and successors.
14. This Agreement may not be modified or amended, or any provision herein waived, in any manner whatsoever, except in writing, signed by the parties hereto.
15. This Agreement may be executed in multiple counterparts, any one of which can be deemed the original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

Date:

11/22/11

Michael Carter Love
Michael Carter Love

Date:

11-17-2011

Randi Linden
Randi Linden

THE VILLAGES OF INDIANA, INC.

By: Sharon E. Pierce
Duly Authorized Representative for The Villages of Indiana, Inc.

Printed: SHARON E. PIERCE
Title: PRESIDENT & CEO
Date: NOVEMBER 22, 2011

THE STATE OF INDIANA, INDIANA DEPARTMENT OF CHILD SERVICES, MARION
COUNTY DEPARTMENT OF CHILD SERVICES

By: _____
Duly Authorized Representative for _____

Printed: _____
Title: _____
Date: _____

By: _____
Duly Authorized Representative for _____

Printed: _____
Title: _____
Date: _____

By: _____
Duly Authorized Representative for _____

Printed: _____
Title: _____
Date: _____

THE VILLAGES OF INDIANA, INC.

By:

Duly Authorized Representative for The Villages of Indiana, Inc.

Printed: _____

Title: _____

Date: _____

THE STATE OF INDIANA, INDIANA DEPARTMENT OF CHILD SERVICES, MARION
COUNTY DEPARTMENT OF CHILD SERVICES

By:



Duly Authorized Representative for OCS (State of Indiana)

Printed: Paul D. Mullin

Title: Lawyer

Date: 12/7/11

By:



Duly Authorized Representative for Marion County DCS (State of Indiana)

Printed: Paul D. Mullin

Title: Lawyer

Date: 12/7/11

By:



Duly Authorized Representative for State of Indiana

Printed: Paul D. Mullin

Title: Lawyer

Date: 12/7/11